

IN THE HIGH COURT OF AUSTRALIA

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THE COMMONWEALTH OF AUSTRALIA

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V.

WESTERN ARMS CORPORATION

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ORIGINAL

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REASONS FOR JUDGMENT  
(ORAL)

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MELBOURNE

5<sup>th</sup> NOVEMBER 1959

THE COMMONWEALTH OF AUSTRALIA

v.

WESTERN ARMS CORPORATION

JUDGMENT  
(ORAL)

FULLAGAR J.

THE COMMONWEALTH OF AUSTRALIA

v.

WESTERN ARMS CORPORATION

This is a Summons under Order 11, Rule 5, the application being that I should discharge an order made by me on 11th March of this year. That order gave leave to issue a writ, notice of which was to be served outside the Commonwealth, and also gave leave to serve notice of the writ in the United States of America.

The action is an action for damages for breach of an alleged contract for sale of goods by the plaintiff to the defendant, the breach alleged being a refusal or failure to take delivery of the greater part of the goods alleged to have been sold.

My order on 11th March was made on an application under Order 10, Rule 1, the plaintiff maintaining that the case falls within paragraphs (e)(i), (e)(iii) and (f) of sub-rule (1) of that rule. That is to say it claimed that the action is one brought to recover damages for breach of a contract made within the Commonwealth, that the contract is governed by the law of the Commonwealth or a State or Territory of the Commonwealth, and that the breach was committed within the Commonwealth.

It is, of course, sufficient for the plaintiff to establish that the case falls within any one of the three categories. The jurisdiction of the court in respect of the subject matter of the action is given by s. 75(iii) of the Constitution, the matter being one to which the Commonwealth is a party.

The plaintiff put before me in March, and I have before me now, particulars of the alleged contract which it seeks to enforce. That contract, if a contract was made, required, in my opinion, that delivery of the goods should be given and taken

within the Commonwealth. It follows that the alleged breach, which is non-acceptance, was committed, if it was committed, within the Commonwealth. It follows that the defendant's application must fail, and I do not find it necessary to consider whether the case falls also within paragraph (e)(i) or paragraph (e)(iii) of Rule 10(1).

The summons is dismissed with costs. I certify for Counsel.